

AMENDED IN ASSEMBLY MAY 19, 1998  
AMENDED IN ASSEMBLY APRIL 16, 1998  
AMENDED IN ASSEMBLY MARCH 26, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2252**

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**Introduced by Assembly Members House and Cardoza**

February 19, 1998

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An act to amend Section 40531 of, and to add Sections 5831, 5832, and 5833 to, the Food and Agricultural Code, relating to quarantine, control, and abatement methods, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2252, as amended, House. Plant quarantine and pest control.

(1) Existing law authorizes the Secretary of Food and Agriculture to investigate and certify to shippers or other financially interested parties the analysis, classification, grade, quality, or condition of any fruit, vegetable, or other agricultural product, as specified.

This bill, instead, would authorize the Department of Food and Agriculture to investigate and certify to other states and countries, as well as to shippers or other financially interested parties, the analysis, classification, grade, quality, or condition of any fruit, vegetable, or other agricultural product, as specified. The bill would authorize the department to accredit persons or business entities to perform those functions.

The bill also would authorize the department to provide, upon request, nonregulatory accreditation, analytical certification, diagnostic, inspection, quality assurance, testing, and other nonregulatory services relating to nursery stock, plants, seed, or other plant pest and diseases on a charge-for-service basis, to accredit private persons or business entities to perform those services and to adopt regulations to establish accreditation criteria.

The bill would make it unlawful for any person or business entity that is not accredited by the department to make any representation regarding accreditation by the department. Because under existing law, any violation of these provisions would be a misdemeanor, this bill would impose a state-mandated local program by creating a new crime.

(2) Under existing law, money received by the department pursuant to provisions of law governing the maintenance of plant registries is continuously appropriated to the department to carry out those provisions.

This bill, by adding new duties to the department under that program, would thereby constitute an appropriation, and by appropriating regulatory fees for general governmental purposes, this bill would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5831 is added to the Food and  
 2 Agricultural Code, to read:  
 3 5831. The Legislature finds and declares all of the  
 4 following:  
 5 (a) Enhancing global business and trade is in the  
 6 economic interest of the state.

1 (b) Domestic and foreign country quarantine and  
2 product quality requirements must be met to allow for  
3 the trade of many agricultural products.

4 (c) Currently, to be acceptable to other states and  
5 foreign governments, phytosanitary and product quality  
6 certification and supporting analyses, diagnostics, and  
7 other testing of that type must be performed by an  
8 impartial, third-party governmental agency. However,  
9 there is a growing trend toward governmental  
10 accreditation of private entities to perform analyses,  
11 diagnostics, inspections, and other activities that support  
12 the issuance by government of required certification  
13 affirming quarantine compliance and product quality.

14 (d) As a result of its regulatory responsibilities, the  
15 department has the technical capacity and expertise to  
16 meet current domestic and foreign government  
17 requirements for impartial, third-party governmental  
18 analytical, certification, diagnostic, inspection, quality  
19 assurance, and testing services and, as accreditation  
20 becomes acceptable to states and foreign governments, to  
21 accredit private entities to perform these kinds of  
22 services.

23 (e) Nonregulatory activities are services for which the  
24 entities that receive the benefits should pay the costs.  
25 However, the department is not authorized or funded to  
26 establish a program to perform nonregulatory  
27 accreditation, analytical, certification, diagnostic,  
28 inspection, quality assurance, or testing work, nor is it  
29 authorized to establish a schedule of charges to recover  
30 its costs for those services.

31 SEC. 2. Section 5832 is added to the Food and  
32 Agricultural Code, to read:

33 5832. It is the intent of the Legislature, in enacting  
34 this article, to enhance the state's business and trade  
35 opportunities by authorizing the department to do all of  
36 the following:

37 (a) Perform nonregulatory services such as export  
38 market phytosanitary and product quality analyses,  
39 certification, diagnostics, inspections, quality assurance,

1 and testing relating to nursery stock, plants, seed, or plant  
2 pests and diseases.

3 (b) Accredit and monitor or audit private entities as  
4 necessary.

5 (c) Establish charges to recover its costs for  
6 nonregulatory services such as export market  
7 phytosanitary and product quality activities.

8 SEC. 3. Section 5833 is added to the Food and  
9 Agricultural Code, to read:

10 5833. (a) The department may provide upon  
11 request, nonregulatory accreditation, analytical,  
12 certification, diagnostic, inspection, quality assurance,  
13 testing, and other nonregulatory services relating to  
14 nursery stock, plants, seed, or other plant pests and  
15 diseases on a charge-for-service basis or may accredit  
16 private persons or business entities to perform those  
17 services.

18 (b) To ensure that the activities performed by private  
19 persons or business entities are valid and reliable, the  
20 department shall adopt regulations to establish  
21 accreditation criteria to govern its accreditation,  
22 monitoring or auditing, and revocation of accreditation  
23 activities. *Any regulations adopted by the department*  
24 *pursuant to this subdivision shall be consistent with*  
25 *applicable federal law.* The department may adopt by  
26 reference any pertinent federal laws or regulations  
27 pertaining to the accreditation of persons or business  
28 entities for the performance of work required to certify  
29 compliance with the quarantine, quality, and other  
30 import requirements established by other states or  
31 foreign countries. *No private, nongovernmental entities*  
32 *that perform diagnostic or field inspections for the*  
33 *issuance of federal phytosanitary certificates shall be*  
34 *accredited until federal rules are adopted that permit and*  
35 *regulate those activities.*

36 (c) It is unlawful for any person or business entity that  
37 is not accredited by the department to make any  
38 representation regarding accreditation by the  
39 department. Any person or business entity that makes  
40 that representation, without valid departmental

1 accreditation, may be enjoined from doing so by any  
2 court of competent jurisdiction upon suit by the  
3 department.

4 (d) To assure validity and reliability, the department  
5 may specify, by order, the location or locations where the  
6 services described in subdivision (a) will be provided.

7 (e) The department may establish, by regulation, a  
8 schedule of charges to cover the department's costs for  
9 specific services it provides. Charges for the accreditation  
10 and monitoring of laboratories located outside the state  
11 shall include the expenses for all required travel and per  
12 diem and may include application, basic, initial, renewal,  
13 and other charges that the department deems necessary  
14 to cover its costs for accreditation and monitoring or  
15 auditing for compliance.

16 (f) Notwithstanding any other provision of this code  
17 regarding the provision of the services described in  
18 subdivision (a), orders issued by the department and  
19 regulations establishing charges adopted by the secretary  
20 pursuant to this section shall not be subject to review,  
21 approval, or disapproval by the Office of Administrative  
22 Law.

23 (g) Nothing in this section shall be construed to  
24 interfere with or supersede any existing inspection,  
25 quality assurance, or certification program conducted by  
26 an agricultural trade or commodity organization, and this  
27 section shall not be construed to require those programs  
28 to be certified or accredited by the department.

29 SEC. 4. Section 40531 of the Food and Agricultural  
30 Code is amended to read:

31 40531. The department may investigate and certify to  
32 other states and countries, shippers, or other financially  
33 interested parties the analysis, classification, grade,  
34 quality, or condition of any fruit, vegetable, or other  
35 agricultural product, either raw or processed, under  
36 regulations that the department may adopt, including the  
37 payment of reasonable service charges, the frequency of  
38 payment of the service charges, the procedure for  
39 payment, the procedure for refunds, and the penalties for  
40 late payment. The department may accredit persons or

1 business entities to conduct the investigation or  
2 certification, or both the investigation and certification.

3 SEC. 5. No reimbursement is required by this act  
4 pursuant to Section 6 of Article XIII B of the California  
5 Constitution because the only costs that may be incurred  
6 by a local agency or school district will be incurred  
7 because this act creates a new crime or infraction,  
8 eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section  
10 17556 of the Government Code, or changes the definition  
11 of a crime within the meaning of Section 6 of Article  
12 XIII B of the California Constitution.

13 Notwithstanding Section 17580 of the Government  
14 Code, unless otherwise specified, the provisions of this act  
15 shall become operative on the same date that the act  
16 takes effect pursuant to the California Constitution.

